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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,126	12/14/2001	James H. Keithly	876P146	9008
26568	7590	11/30/2004	EXAMINER	
COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606			SAYALA, CHHAYA D	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,126

Applicant(s)

KEITHLY ET AL.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004 and 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-20 and 22-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-20, 22-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2002 and 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

The drawings were received on 5/7/2002 and 8/30/2004. These drawings are acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has amended the claim to "30" pounds without pointing out where in the 32-page specification, basis for this amendment can be found. See MPEP 714.02 and 2163.06 which states that "Applicant should specifically point out support for any amendments made to the disclosure". See also 37 CFR 1.121(f). Upon a cursory review, basis for this amendment could not be found and when applicant points out where the basis of this change to claim 4 can be found, this rejection will be withdrawn.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims recite "other" flavanoids or bioflavonoids or polymethoxylated flavones. Unless these "other" products are so well known that they can be designated by such language, it is impossible to demarcate the metes and bounds of these claims. This rejection becomes even more pertinent because of applicant's arguments at page 14-17 of his response.

Claim Rejections -35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kang et al.

The abstract teaches using 2-4% citrus peel in broiler diets. This renders obvious the language "about 1.5%" of the claims. The patent does not teach poultry being

housed in confining spaces. However, it is well known that to produce broilers, poultry have to be housed in confining spaces. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made, that in order to produce broilers shown by Kang et al., it would have been necessary to place poultry in confining spaces. The limitations of claims 31-39 are all based on the feeding of citrus by-products and therefore are rendered obvious by the reference as well, by virtue of Kang et al. including citrus peel in broiler diets in similar amounts. Note that Kang et al. only teach that raising amounts of citrus peel to 6% did not result in any beneficial result. There is nothing in Kang et al. that teaches against feeding lesser amounts. In fact, Kang et al. uses 0, 2, 4 and 6% in their experiments and only teach against using the 6% value. Obviously, 0% was the control. It would have been obvious to one of ordinary skill in the art to optimize levels of citrus peel between 0.1-5.9% to get the best results a skilled worker possibly can, the motivation being to achieve maximum growth with the minimum of amounts.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Deyoe et al.(Poultry Science, pages 1088-90, 1962).

The reference teaches feeding broilers up to 2.5% bioflavonoids. Bioflavonoids are inherently present in citrus peels or any citrus byproduct and is known to be a beneficial byproduct of such. (See specification). See page 1088 in the reference. The patent does not teach poultry being housed in confining spaces. However, it is well known that to produce broilers, poultry have to be housed in confining spaces and therefore, this is inherent to raising a broiler.

Claim Rejections - 35 USC § 102/35 USC § 103

6. Claims 20-39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Deyoe et al.

The reference teaches feeding broilers up to 2.5% bioflavanoids. Bioflavonoids are inherently present in citrus peels or any citrus byproduct and is known to be a beneficial byproduct of such. (See specification). See page 1088 in the reference. The patent does not teach poultry being housed in confining spaces. However, it is well known that to produce broilers, poultry have to be housed in confining spaces, and therefore this is inherent. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made, that in order to produce broilers shown by Deyoe et al., it would have been necessary to place poultry in confining spaces. The limitations of claims 31-39 are all based on the feeding of citrus by-

products and therefore are rendered obvious by the reference as well, by virtue of Deyoe et al. including citrus peel in broiler diets in similar amounts.

Response to Arguments

Applicant's arguments filed 7/19 and 8/30/04 have been fully considered but they are not persuasive.

Applicant has amended the claims to read on "about 1.5%". First, it is not clear if the "about" language in the claims renders them patentable based on Kang et al. As discussed above, Kang et al. uses 0, 2, 4, and 6%. How far is 'about 1.5%' from Kang et al.'s 2%, that the instant claims are not obvious to one of ordinary skill in the art?

Second, even if, for arguments sake, the claims were to recite 1.5%, because Kang et al. clearly states that 6% was not beneficial, there is no teaching or fair suggestion that would not motivate one of ordinary skill in the art to use smaller amounts that obviously obtain better results. On the other hand, a person skilled in the art would be motivated to obtain maximum results simply by using smaller amounts, the motivation being to achieve maximum growth with the minimum amounts.

As for the Deyoe et al. reference teaching bioflavonoid concentrations and applicant pointing out to the Manthey et al. reference to show that to achieve a final concentration of 0.5% bioflavonoids, 12.8% peel would be required and to obtain 2.6% bioflavanoid, 19.2% peel would be required, while this may be the calculation for a peel, applicant is reminded that citrus peel is not the only citrus by-product in the claims. The claims recite any "citrus by-product" and a claim such as 10, recites more than the peel,


while claims 13-19 recite any or all citrus by-products, even those that cannot be fathomed for examination purposes, because of the "other" language of applicant's claims. Therefore, the rejections are being maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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